



November 25, 2002

The Honorable Jeffrey W. Runge, M.D.
Administrator
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, DC 20590

Dear Dr. Runge:

Re.: Petition for Reconsideration; Final Rule Regarding Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects (67 Fed. Reg. 63295, October 11, 2002)

The Alliance of Automobile Manufacturers (Alliance), whose members are BMW Group, DaimlerChrysler, Fiat, Ford Motor Company, General Motors, Isuzu, Mazda, Mitsubishi Motors, Nissan, Porsche, Toyota, and Volkswagen, submits the following petition for reconsideration of certain issues raised by the final rule adopted in the above referenced notice. The final rule adopted amendments that implement the foreign safety recall and safety campaign reporting provisions at Section 3(a) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (P.L. 106-414).

- I. NHTSA Should Delete From the Definition of "Other Safety Campaign" the Phrase It Added in the Final Rule About Advice to A Dealer to Cease Delivery or Sale**
- 1. Neither Notice of the Definition Adopted for "Other Safety Campaign" nor the Opportunity to Comment on this Definition has been Provided**

The notice of proposed rulemaking promulgated by NHTSA to implement the foreign safety recall and safety campaign reporting requirements at Section 3(a) of the TREAD Act proposed to define the phrase "other safety campaign" contained in Section 3(a) of the Act as:

Other safety campaign means an action in which a manufacturer, including but not limited to a foreign subsidiary or affiliate or agent of a manufacturer, communicates with owners and/or dealers in a foreign country with respect to conditions under which vehicles or equipment should be operated, repaired, or replaced, that relate to safety. See 66 Fed. Reg. 51917.

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Isuzu • Mazda • Mitsubishi Motors • Nissan • Porsche • Toyota • Volkswagen • Volvo**

In the preamble to its NPRM, the agency stated that other "safety campaign" would be defined as, "an action in which a manufacturer communicates with owners and/or dealers with respect to conditions under which a vehicle or equipment item should be operated, repaired, or replaced, that relate to safety." (Emphasis added). See 66 Fed. Reg. 51910.

The Alliance and other commenters asserted that the proposed definition of "other safety campaign" was too broad, "as it would include, for example, communications encouraging safety belt use or discouraging drunk driving ... technical service bulletins to dealers on new repair procedures." (Emphasis added.) See NHTSA Docket No. 2001-10773, entry no. 10. The Alliance proposed an alternate definition for this term that would have, "the advantage of restoring the concept that the relevant, reportable campaigns should have some nexus to alleged defects..." Ibid.

In its discussion of those comments, NHTSA stated (67 Fed. Reg. at 63299):

These comments are similar to those we received on the definition we proposed in the early warning reporting rule for "Customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment." We responded to these comments by modifying the definition adopted in the final rule to specifically exclude:

promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale; or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment [67 FR 45822, 45874].

We are adding the same exclusions to the definition of "other safety campaign."

What is quoted in the foreign reporting final rule notice is the exclusion that was added to a portion of the early warning rule's definition of "customer satisfaction campaign, etc.," but the portion of the quotation after the semicolon is not part of that exclusion. Instead, it is another element of the early warning rule definition of "customer satisfaction campaign," etc. See 67 Fed. Reg. at 45874. The phrase after the semicolon also appears in the definition of "other safety campaign" in the foreign recall reporting final rule itself:

Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment. (Emphasis added.) See 67 Fed. Reg. 63310.

We think it is likely that the inclusion of the language about “advice or direction. . .” in the foreign recall rule preamble and in the definition of “other safety campaign” is the result of inadvertent copying of more than the exclusion from the early warning rule that NHTSA said it was going to add. We think this for several reasons:

- The term “other safety campaign” includes “safety” as an essential element and the definition reinforces that by incorporating the phrase “relate to safety.” With the “advice or direction” statement tacked on to the end of the definition of “other safety campaign” and preceded by a semi-colon, there is no link between the “relate to safety” statement in the first part of the definition and “advice or direction.” This creates the incongruous situation in which a term that includes the word “safety” has a two-part definition, but only the first part has “safety” as a qualifier.
- The preamble says nothing about adding a requirement to report about such “advice or direction.”
- If NHTSA wanted to add a new requirement to the final rule, we are confident that it would have first provided notice and an opportunity to comment, as it is required to do.

The Alliance requests that NHTSA correct the definition of “other safety campaign” by eliminating the semi-colon and all that follows up to the period. If it is NHTSA’s intent to add “advice and direction” as a category, then it should make the same correction to the final rule and publish a notice of proposed rulemaking so that the public has the opportunity to understand NHTSA’s rationale and an opportunity to comment.

2. Communications That Are Not Recalls or Other Safety Campaigns Are Not Properly Requested under 49 U.S.C. 30166(l)

Section 3(a) of the TREAD Act requires that NHTSA be notified whenever a determination has been made to “conduct a safety recall or other safety campaign in a foreign country”. The phrase “other safety campaign” was specifically included to ensure that campaigns conducted in foreign countries to remedy safety-related concerns through the repair or replacement similar to those campaigns that gave rise to this requirement are reported to NHTSA, irrespective of the name assigned to these recall actions. See 66 Fed. Reg. 51907.

First, it is clear that the data available to NHTSA regarding problems with the Firestone tires was insufficient. While testimony showed that the agency had received some complaints about the tires, both from consumers and from an automobile insurance company, they did not receive data about Ford’s foreign recall actions. (Emphasis added) See House Report H. Rpt. 106-954.

Thus, Congress mandated that information about remedial campaigns with a nexus to alleged safety-related defects conducted in foreign countries, be reported to NHTSA within five days of the determination. It remains the view of the Alliance that “other

safety campaigns,” in this context, are communications that involve either an offer or a direction to remedy a defect or non-compliance that is related to safety.

To conform the definition of “other safety campaign” to the requirements of Section 3(a) of the TREAD Act dealing with the reporting of information about remedial campaigns to address safety related defects determined to exist in certain vehicles outside of the United States, NHTSA should amend this definition to read as follows:

Other safety campaign means a remedial action in which a manufacturer communicates with owners, dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); ~~or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.~~

This definition has the advantage of returning to the concept intended by Congress when enacting Section 3(a) of the TREAD Act that the relevant, reportable campaigns should have some nexus to alleged defects, and should not pick up non-remedial programs.

In the preamble to the foreign recall reporting final rule, NHTSA makes what it calls a reasonable assumption that local (foreign) subsidiaries and affiliates are not authorized to decide to conduct safety recalls without the concurrence of corporate headquarters or at least concurrent notice to headquarters. 67 Fed. Reg. at 63303. That is an incorrect assumption for at least some Alliance members. More importantly, while safety recall decisions often require at least local executive management approval and are done with some local control and formality, the other types of communications that NHTSA has swept into the foreign recall reporting rule through its broad definition of “other safety campaigns” are an entirely different matter. Service bulletins and similar communications, as well as an advice or direction to stop sale, may be issued for a multitude of reasons. Because of their routine nature and limited consequences, they may be issued without executive management participation or knowledge, much less approval or notice to corporate headquarters. Because of this, a five-day rule is neither needed nor feasible. It would compound the error to extend NHTSA’s assumption about how business is conducted around the world to beyond what are really recalls or their equivalents.

The Alliance requests, therefore, that the agency narrow its definition of “other safety campaigns” to communications that direct or offer a remedy for a defect or non-compliance related to safety.

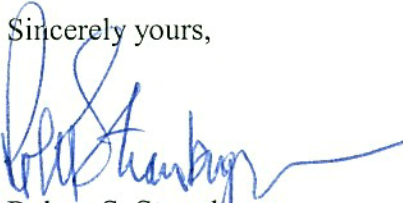
II. Technical Correction

In the preamble to the final rule, NHTSA stated its intention to exempt from reporting, "any safety campaign involving substantially similar motor vehicle equipment that does not perform the same function in vehicles or equipment sold or offered for sale in the United States." See 67 Fed. Reg. 63306. The regulatory text, however, intended to implement this decision would only provide relief from reporting when the component or system that gave rise to the foreign recall or other safety campaign "does not perform the same function in any vehicles or equipment sold or offered for sale in the United States." (Emphasis added) See 67 Fed. Reg. 63311. In order to clarify that a manufacturer need only look at the substantially similar vehicles to determine if this exemption is available, the Alliance recommends that §579.11(d)(2) be amended as follows:

The component or system that gave rise to the foreign recall or other safety campaign does not perform the same function in any substantially similar vehicles or equipment sold or offered for sale in the United States.

The Alliance urges NHTSA to carefully consider this petition for reconsideration addressing the definition of "other safety campaigns" that determine the reporting requirements under Section 3(a) of the TREAD Act.

Sincerely yours,



Robert S. Strassburger
Vice President
Vehicle Safety and Harmonization
Alliance of Automobile Manufacturers

cc: Mr. Kenneth N. Weinstein, Esq.
Associate Administrator for Enforcement

Docket Management, Room PL – 401